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In re Application of
GUILIO RATTI
Serial No.: 09/868,293
PCT No.: PCT/IB99/02065
Int. Filing Date: 17 December 1999
Priority Date: 18 December 1998
Attorney's Docket No.: 1641.102
For: CHLAMYDIA TRACHOMATIS ANTIGENS

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on applicant's 'Petition for Revive Application Pursuant to 37 CFR 1.137 (b)' filed in the United States Patent and Trademark Office on 13 August 2002.

BACKGROUND

On 17 December 1999, applicant filed international application No. PCT/IB99/02065 which claimed priority of an earlier British application filed 18 December 1998. A copy of the international application had been communicated to the United States Patent and Trademark Office from the International Bureau on 29 June 2000.

On 14 July 2000, a Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 18 June 2001.

On 15 June 2001, applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. §371 with the basic national fee.

On 24 July 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) and a Notification to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/920). The Form 905 indicated that an oath or declaration executed by the inventor was required. It was noted that the surcharge for filing the oath or declaration after the thirty month had been paid. The notification set a two month time period within which to respond. Extensions of time were available under 37 CFR 1.136(a). The Form 920 advised applicant that the required sequence listing pursuant to 37 CFR 1.821-1.825 had not been submitted.

On 04 March 2002, applicant filed a declaration executed by the sole inventor and filed the sequence listing information in computer readable form along with a paper copy.

On 12 April 2002, a Notification of Defective Response was mailed to applicant indicating that the computer readable form that was filed with the application was damaged or unreadable and that a substitute computer readable form must be submitted to comply with the requirements for such disclosure as set forth in 37 CFR 1.821-1.825. Applicant was given one month from the date of the Notification within which to respond or by 12 May 2002 or the time remaining as set forth in the Notification of Missing Requirements.

On 13 August 2002, applicant filed a petition to revive with the petition fee of \$1280, in effect, requesting the withdrawal of the abandonment of the application or in the alternative, a four month extension of time. Applicant also filed a substitute computer readable form (CRF) of the Sequence Listing as required by 37 CFR 1.825(d) and Paper Sequence Listing (4 pages).

DISCUSSION

A review of the application file reveals that no extensions of time were available to respond to the Notification of Defective Response since the Notification of Missing Requirements was issued on 24 July 2001 and any extensions of time expired on 24 February 2002. Thus, applicant's request for an extension of time is untimely and refused.

In the alternative, applicant requests revival of the abandoned application on the grounds that the abandonment was unintentional.

A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper response unless it has been previously submitted, (2) the fee required by law for revival of an unintentionally abandoned application (1.17(m)), and (3) a statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional".

The proper response, that is, the sequence listing in CRF and paper copy, were not located in the application and upon the request of the undersigned, subsequently submitted on 15 November 2002. Applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

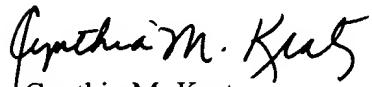
A review of the application file reveals that the required petition fee of \$1.280 has also been paid. The proper response has been submitted with the submission of the computer readable form (CRF) of the Sequence Listing as required by 37 CFR 1.825(d) and Paper Sequence Listing.

Thus, the requirements of 37 CFR 1.137(b) have been satisfied. The request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

CONCLUSION

The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing. The 35 U.S.C. 371 date is **04 March 2002**.



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